NOTES OF CASES.

Damages—For Mental Suffering Alone.—Plaintiff delivered to defendant company for transportation from Asheville, N. C., to Hickory Grove, S. C., a casket and grave-clothes intended for the burial of the wife of plaintiff. Through the negligence of defendant's agent, the casket was misrouted, and arrived too late for burial. Plaintiff accepted full payment for the value of the articles shipped, and brought this action claiming damages solely on account of the mental anguish occasioned him by the delay. Held, that no recovery should be allowed; mere mental pain and anxiety being too vague for legal redress where no injury is done to person, property, health or reputation. Southern Express Co. *v.* Byers, 36 Sup. Ct. 410.

This decision of the Supreme Court follows the view taken by the lower Federal courts in a long list of cases cited in the opinion. Thus the doctrine announced by the Supreme Court of Texas in 1881 in the case of So Relle *v.* Western Union Tel. Co., 55 Tex. 308, is definitely rejected by the United States Courts. The question of whether recovery may be had for mental suffering alone has usually arisen in cases against telegraph companies on account of delayed or lost death-messages. The same reasoning which allows recovery in those cases would seem equally applicable, however, to a common carrier of goods who accepts the goods with notice of their character, so that the knowledge that mental suffering may follow from their delay may be imputed to it. For a time the doctrine of the Texas case gained adherents rapidly, and seven states are now lined up on that side of the question. As against this number, however, fifteen states, and now the Supreme Court of the United States, have taken the opposite view. A recent case which reviews many of the cases on the question is that of Western U. Tel. Co. *v.* Choteau, 28 Okla. 664, 115 Pac. 879, 49 L. R. A. (N. S.) 206, cited in the opinion in the principal case.

Employers' Liability Act—Casual Negligence.—In the case of Great Northern R. R. *v.* Wiles, 36 Sup. Ct. R., 406, it was held that there was no room for the application of the rule of comparative negligence established by the Employers' Liability Act of April 22, 1908 (sec. 8657), where the rear brakeman of a parted freight train, disregarding his duty to protect the rear of his train by going back a short distance and giving the warning signals which the carrier's rules required, remained in the caboose and was killed there when a passenger train, which he knew was closely following, ran into the standing train, since his was the casual negligence, even if negligence could be imputed to the carrier from the pulling out of the drawbar breaking the freight train in two, there being no claim that the passenger train was negligently run. The court said in part: